United Nations S/2007/573

Security Council

Distr.: General
27 September 2007

Original: English

Letter dated 18 September 2007 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Cape Verde submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ricardo Alberto **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

07-53033 (E) 151007 171007

Annex

Letter dated 16 February 2007 from the Permanent Representative of Cape Verde to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

In response to the letter from the Chairman of the Counter-Terrorism Committee dated 28 May 2002, I have the honour to attach herewith the supplementary report of the Government of the Republic of Cape Verde submitted under resolution 1373 (2001) (see enclosure).

(*Signed*) Fátima **Veiga**
Ambassador

Enclosure

[Original: French]

Report of the Government of the Republic of Cape Verde in pursuance of paragraph 6 of Security Council resolution 1373 (2001)

Paragraph 1

1.1 Please outline the particular provisions of Law No. 78/IV/93 and of any other law that enable the economic and financial system of Cape Verde to guard against operations carried out by persons or entities that are involved or suspected of being involved in criminal activities, especially terrorist activities.

Law No. 17/VI/2002 (see attached document) replaced Law No. 78/IV/93. It applies to credit institutions and institutions allied to banks, insurance companies and companies managing pension funds (financial entities) (art. 2). The Criminal Investigation Service is competent to investigate money-laundering (art. 5). The Cape Verdean judiciary is required to adopt all judicial measures, including freezing and confiscation (art. 6.2), to prevent the disposal of property and proceeds resulting from money-laundering whose underlying offence is terrorism (art. 3).

Financial entities must require identification of all their clients in any business relationship (art. 16) and, in the absence of identification, the transaction must be refused (art. 18). Article 19 of this Law imposed a "greater duty of diligence" on financial entities, in the case of transactions whose frequency, unusual volume or complex structure are grounds for suspecting a link to the commission of one of the offences referred to in article 3, including terrorism. Financial entities are also required to train and update their staff on measures to prevent money-laundering (art. 21).

Article 22 establishes a "duty to inform", applicable to financial entities, which must on request provide the judge or prosecutor with information, documents or any other object in their possession. Article 23 establishes a "special duty of cooperation": financial entities must immediately contact the Criminal Investigation Service by fax or e-mail, when they suspect that funds or property which they have received or which appear on their books are the proceeds of one of the offences described in article 3 (including terrorism) or whenever they are aware of any event that may constitute evidence of the commission of such crimes.

The provisions of Law No. 17/VI/2002 do not describe information sharing as a violation of banking secrecy (art. 25).

1.2 Please provide a progress report on, and an outline of, the proposals to amend the legislation relating to money-laundering.

Law No. 78/IV/93 was replaced by Law No. 17/VI/2002, which is described in the preceding paragraph. The main innovation was the duty to report unusual and suspicious transactions.

1.3 In view of the intention of Cape Verde to become a party to the Convention for the Suppression of the Financing of Terrorism, could Cape

Verde please describe how it proposes to incorporate the offences specified in that Convention into its domestic laws.

Cape Verde became a party to the International Convention for the Suppression of the Financing of Terrorism on 10 May 2002. It has requested technical assistance from the United Nations Office on Drugs and Crime (UNODC) for the incorporation into its legislation of the universal counter-terrorism instruments and the relevant Security Council resolutions, in particular in order to ensure that the legislation being drafted conforms to the provisions of those instruments. A workshop on money-laundering and terrorism financing was held in Praia from 14 to 17 November 2006 and another workshop was held in Praia from 29 January to 2 February 2007 on the ratification and implementation of the universal counter-terrorism instruments, at which draft legislation was discussed. Cape Verde participated in the drafting of a model law on the financing of terrorism which was adopted in the Economic Community of West African States and will serve as a basis for the drafting of specific legislation on the subject.

Paragraph 2

2.1 Please provide a progress report on the reform of the criminal system mentioned in the report. Please describe the particular proposed reforms that will ensure compliance with the various requirements of this paragraph, in particular the measures relating to criminalizing terrorist acts.

By Legislative Decree No. 4/2003 of 18 November 2003, Cape Verde adopted a new Criminal Code, which establishes various offences covered in the universal counter-terrorism instruments.

The new Criminal Code (art. 4.1 e) extends jurisdiction to offences which the State of Cape Verde is required under international conventions to prosecute. The Criminal Code covers inter alia the offences of terrorist organization (art. 315), collaboration with a terrorist organization (art. 316), qualified abduction (art. 138) and sabotage (art. 307) and, in the section on offences against the international community, attacks on foreign entities (art. 265). The provisions on incitement to war and genocide (art. 267) punish incitement to hatred against a people or an ethnic, racial or religious group.

Draft legislation is under discussion which would bring other acts of terrorism within the scope of the domestic legal system.

Cape Verde has also adopted a new Criminal Procedure Code (Legislative Decree No. 2/2005 of 7 February 2005), which helped considerably to modernize procedures. For example, it allows statements to be taken by videoconference (art. 345), facilitates wiretapping (arts. 255 and 256) and limits excessive use of appeals (art. 462).

In addition, Law No. 81/VI/2005 was adopted recently on the protection of witnesses and other participants in criminal proceedings. Under this Law, the identity of witnesses need not be revealed in cases of serious crimes committed by criminal or terrorist organizations.

2.2 Although the report makes clear that no request for assistance in criminal matters has been made so far to the Government of Cape Verde, are measures

in place to enable such assistance to be provided on the making of such a request?

Cape Verde is able to provide assistance on the basis of bilateral and multilateral treaties and ratified treaties or on a basis of reciprocity.

It should be emphasized that existing cooperation arrangements already permit a positive response to several requests for assistance in cases of transnational organized crime, such as drug trafficking.

Paragraph 3

3.1 Please provide a list of the relevant bilateral treaties that Cape Verde has concluded with other countries.

Cape Verde has concluded judicial agreements with Portugal and Senegal and treaties are being negotiated with Spain and Italy.

At the multilateral level, Cape Verde is party to a treaty within the Community of Portuguese Language Countries (CPLP).

3.2 The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Cape Verde in:

- **becoming a party to the instruments to which it is not yet a party; and**
- **enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.**

Instruments adopted:

Cape Verde is a party to the following international instruments on terrorism:

- 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (4 October 1989);
- 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (20 October 1977);
- 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (20 October 1977);
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (10 September 2002);
- International Convention against the Taking of Hostages (10 September 2002);
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (12 September 2002);
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (3 January 2003);
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (3 January 2003);
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (4 November 2002);

- International Convention for the Suppression of Terrorist Bombings (10 May 2002);
- International Convention for the Suppression of the Financing of Terrorism (10 May 2002).

Cape Verde has already adopted the necessary domestic measures for the ratification of the 1980 Convention on the Physical Protection of Nuclear Material. It now has only to deposit the instrument of ratification with the International Atomic Energy Agency.

Domestic legislation:

Cape Verde has requested UNODC technical assistance for the incorporation in its legislation of the universal counter-terrorism instruments and the relevant Security Council resolutions, in particular in order to ensure that the legislation being drafted conforms to the provisions of those instruments. A workshop on money-laundering and terrorism financing was held in Praia from 14 to 17 November 2006 and another workshop was held in Praia from 29 January to 2 February 2007 on the ratification and implementation of the universal counter-terrorism instruments, at which draft legislation incorporating the relevant offences was discussed.

3.3 What measures are available to ensure compliance with subparagraph 3 (f)?

Legislative Decree No. 6/97 of 5 May 1997 provides for the granting of travel documents to refugees within the meaning of paragraph 11 of the annex to the 1951 Geneva Convention.

The 1951 Geneva Convention relating to the Status of Refugees is automatically applied in the Cape Verdean legal system. It does not permit the granting of refugee status (art. 1 F) to any person suspected of having committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes, or a serious non-political crime outside the country of refuge prior to admission to that country as a refugee or to any person guilty of acts contrary to the purposes and principles of the United Nations. This makes it possible to deny refugee status to persons suspected of being linked to terrorist acts.

3.4 Please describe the procedures and legal provisions that regulate extradition. Is Cape Verde party to any bilateral treaties on extradition?

Chapter VI of Legislative Decree 6/97 of 5 May 1997 (see attached document) establishes procedures for active extradition (section I) and passive extradition (section II). These procedures concern inter alia competence (art. 85) and admissibility (art. 86), purposes of extradition (art. 88), refusal (art. 90), procedure to be followed in the case of more than one request for extradition (art. 96), administrative procedure (art. 100) and judicial procedure (art. 102) and possibility of preventive detention (art. 101).

In addition, under the Constitution of Cape Verde, treaties ratified are considered to be automatically part of the domestic legal system. Extradition may be granted on the basis of the treaties ratified by Cape Verde.

Cape Verde has concluded judicial agreements with Portugal and Senegal and is negotiating treaties with Spain and Italy.

At the multilateral level, Cape Verde is party to a treaty within the Community of Portuguese Language Countries (CPLP).

3.5 Do claims of political motivation provide grounds for the refusal of extradition of alleged terrorists?

Article 91 of Legislative Decree No. 6/97 of 5 May 1997 lists offences that cannot be considered as political for extradition purposes. Article 91 c includes acts that cannot be considered as political by virtue of the provisions of the conventions to which Cape Verde has become party.

Paragraph 4

4.1 Has Cape Verde addressed any of the concerns expressed in paragraph 4 of the resolution?

The National Development Programme of the Government of Cape Verde contains a global strategy for combating transnational organized crime, including drug trafficking, money-laundering, terrorism and corruption, and ensuring safety and law and order while protecting the rights and freedoms of citizens, by upgrading the operational capacity of the police, enhancing civic awareness and strengthening activities to protect the public.

Being aware of the threat to its sustainable development posed by transnational organized crime and in order to implement this strategy, Cape Verde has signed with the UNODC regional office in Dakar the Cape Verde Integrated Crime and Narcotics Programme (CAVE INTECRIN) for the development of a comprehensive programme to combat organized crime and drug trafficking, with particular emphasis on strengthening the rule of law and combating corruption, money-laundering and terrorism.

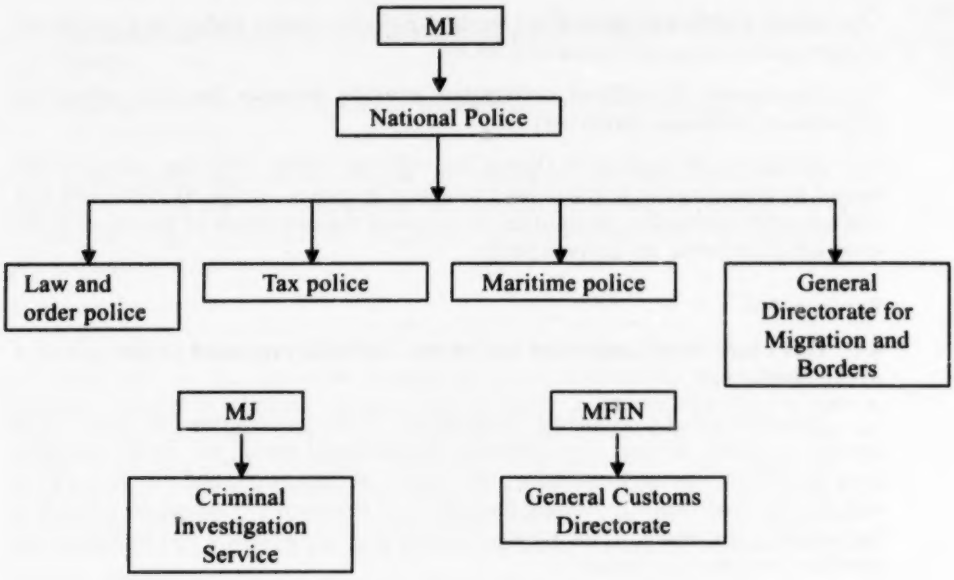
As regards legislation, the Criminal Code of Cape Verde contains provisions prohibiting the possession, manufacture, sale, transport or storage of military weapons and ammunition, prohibited weapons, explosive, inflammable, incendiary, toxic or asphyxiating devices or substances or their components (art. 294). Article 296 of the Criminal Code of Cape Verde criminalizes inter alia the emission of radiation and the release of radioactive substances.

The draft legislation being prepared to implement the universal counter-terrorism instruments will contain provisions criminalizing several activities relating to biological, chemical and nuclear weapons.

Other matters

Could Cape Verde please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

The administrative machinery in question comes under the authority of three different Ministries: the Ministry of the Interior (MI), the Ministry of Justice (MJ) and the Ministry of Finance (MFIN). Legislative Decree No. 6/2005 (see attached document) created the National Police and determined the structure and competence of the various police forces.



Comments

Cape Verde takes this opportunity to draw the attention of the Committee to the difficulty of implementing certain provisions of resolution 1373 (2001) concerning measures that require the purchase of more modern equipment and software. In particular, there is concern about inadequate security equipment at airports and seaports.

Praia, 2 February 2007